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Report of the Special Committee on the Charter of the United Nations and on the Role of the Organization

Consequences that the increase in the volume of cases before the International Court of Justice has on the operation of the Court

Report of the Secretary-General

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I. Introduction

1. On 15 December 1997, the General Assembly adopted resolution 52/161 entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization". In paragraph 4 of that resolution, the Assembly invited Member States, the States parties to the Statute of the International Court of Justice, and the International Court of Justice if it so desired, to present, before the fifty-third session of the General Assembly, their comments and observations on the consequences that the increase in the volume of cases before the Court had on its operation, on the understanding that whatever action might be taken as a result of the invitation would have no implications for any changes in the Charter of the United Nations or the Statute of the International Court of Justice.

2. By a note dated 29 December 1997, the Secretary-General invited States and the International Court of Justice to submit their comments pursuant to paragraph 4 of resolution 52/161.

3. As at 21 August 1998, a reply had been received from the International Court of Justice. The reply is reproduced in section II below. Additional replies which may subsequently be received will be reproduced as addenda to the present report.

II. Comments and observations received

International Court of Justice

[Original: English/French]
[24 June 1998]

1. After explaining the current workload of the Court, this report examines the effects of the increase in the volume of its work and the budgetary difficulties that it faces. It then analyses the responses of the Court to this double challenge and its needs that have yet to be met.

1. The Court and its workload

2. The International Court of Justice is one of the six principal organs of the United Nations and its principal judicial organ, a body whose independence and autonomy are recognized by the Charter of the United Nations and the Statute of the Court, which itself is an integral part of the Charter. The Court must at all times be able to exercise the functions entrusted to it if the terms and intent of the Charter are to be implemented.

3. The entire *raison d'être* of the Court is to deal with the cases submitted to it by States Members of the United Nations and parties to the Statute and with the requests for advisory opinions made by United Nations organs or specialized agencies. These statutory duties of the Court mean that it does not have programmes which may be cut or expanded at will, although such possibilities may exist for certain other United Nations organs.

4. Since its establishment in 1946, the Court has had to deal with 76 disputes between States and 22 requests for an advisory opinion. Of those, 28 of the contentious cases were brought before the Court since the 1980s. Whereas in the 1970s the Court characteristically had one or two cases at a time on its docket, since the early 1980s there has been a marked increase in recourse to the Court. Throughout the 1990s the figures have been large, standing at 9 in 1990, 12 in 1991, 13 in the years 1992–1995, 12 in 1996, 9 in 1997. Ten cases are currently pending.

5. In reality, there is a still larger number of matters awaiting the Court's decision. This is because, the jurisdiction of the Court being based on consent, there are often "cases within cases" to determine questions of jurisdiction and admissibility when this is contested by one of the parties. Such preliminary issues are being or have been raised in the current cases of *Land and Maritime Boundary between Cameroon and Nigeria*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia Herzegovina v. Yugoslavia)*; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*; *Oil Platforms (Iran v. United States)*; *Fisheries Jurisdiction (Spain v. Canada)*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. the United States of America; Libya v. the United Kingdom)*. Just as in proceedings on the merits, these preliminary questions have to be dealt with by multiple rounds of written pleadings, oral arguments, deliberations and judgments, thus considerably multiplying further the "real" number of cases on the Court's docket at any given time. In certain recent cases the respondent State has not only replied upon the merits but has also brought counter-claims (*Oil Platforms; Genocide*). The admissibility of the counter-claims and the subsequent exchanges of pleadings that they engender have given rise to yet further "cases within cases" upon the Court's listed docket.

6. Furthermore, it is not uncommon for the Court suddenly to receive a request for provisional measures. Such

a request takes priority over everything else and entails written pleadings, hearings, deliberations and an Order issued by the Court. During the last two and a half years, there have been three such cases on provisional measures.

7. It must be appreciated that the Court deals with cases involving sovereign States, bearing on issues of great importance and complexity, in which the States have mobilized their full resources to submit heavy written pleadings and present detailed oral arguments. In order to cope with such cases, the practice has been that, after reviewing the written and oral pleadings, each judge of the Court prepares a written note, in fact a detailed analysis of the legal issues and the judicial conclusions that follow. Each judge then studies the notes of his or her colleagues before engaging in deliberations on the various complex issues. At the end of these deliberations, which may last over several days, a drafting committee is selected to prepare the Court's judgment or opinion. All judges then prepare comments and amendments to the draft judgment or opinion, which is further refined by the drafting committee and put again before the Court before being adopted in its final form. The fashioning of the Court's decisions accordingly brings to bear the contributions of every Member of the Court, as befits a Court of universal composition and mission.

8. The evidence is clear, both from the history of the Permanent Court of International Justice and of this Court, that judicial recourse is resorted to more frequently in times of détente rather than of tension. The increasing tendency to bring cases to the Court by special agreement is testimony to this. Further, more and more multilateral conventions include reference clauses to the International Court for the settlement of disputes. Moreover, 13 more States today accept the "optional clause" under Article 36, paragraph 2, of the Statute, allowing cases to be brought against them by States accepting the same obligation, than was the case in the early 1980s. There is thus every reason to suppose that the rise since this period in the number of cases coming to the Court represents a fundamental change, which is likely to endure and perhaps expand.

2. The effects of this increased workload

9. This increase in the Court's workload has had multiple effects, which may be briefly summarized. The essential backdrop is that the Court receives a modest annual budget of less than US$ 11 million, a sum not much larger, in real terms, than when the Court had little work in the 1960s and 1970s. The Court was granted some expansion in the size of the permanent staff of the Registry, from the beginning of the 1980s until the early 1990s. The Court is grateful to the General Assembly for that, which had largely to be directed to the legal staff and to providing some secretaries for the Judges.

10. However, the growth in the Court's work has been such that the increase has turned out to be insufficient.

11. Moreover, the problems of the Court were compounded in 1996 when it lost posts which have not been restored and sustained a significant budgetary cut. Greater demands are being made on the small Registry of the Court (57 staff in its totality, from the Registrar himself to two messengers) for its research and legal, library and documentary services, and especially for translation and secretarial services. The workload of the Members of the Court and of the staff, in real terms, has thus relentlessly increased. Indeed, the obligations of the Court to fulfil its functions under the Charter and the Statute have meant that the Registry is sometimes being asked to perform tasks that are quite simply physically impossible under the present staffing and budgetary regime.

12. By the terms of Article 39 of the Statute, the official languages of the Court are French and English. Whether in a contentious case or advisory proceedings, all the essential elements must be available in the two languages: acts instituting proceedings, the written pleadings (Memorial, Counter-Memorial, Reply and Rejoinder, including their often extensive annexes or written statements in advisory proceedings), internal distributions of the Court linked to the cases, rounds of oral proceedings, press communiqués, Judges' Notes, orders, the judgment or advisory opinion, separate and/or dissenting opinions and declarations. From 1 January 1994 to 15 May 1998, more than 8.5 million words in this category were translated.

13. It is also necessary to translate documents less immediately connected with particular cases, but without which the Court cannot function: office circulars, press communiqués about matters other than specific cases, records of the meetings of the Court. In the same period more than half a million words of this kind were translated.

14. The Court translates no more than it needs to. In 1996 and 1997, decisions were taken whereby *in extenso* records would no longer be prepared for the internal meetings of the Court, as well as those of the Administrative and Budgetary Committee and of the Rules Committee. Usually only a short resumé of the matters decided would henceforth be recorded, and translated.

15. The pace of the Court's work essentially depends upon the speed at which reliable translations can be produced and necessary revisions put in place. The productivity of

translation staff in respect of the total of 9 million words translated between 1994 and 1998 is significantly higher than the required Untied Nations rate. Yet the task remains overwhelming and the financial implications deeply disturbing. Parties produce ever longer pleadings and annexes; the Court has more cases; but it is required to operate on a diminished and wholly inadequate base of resources. The average length of a procedure before the Court has gone from two and a half to four years. At certain moments in the Court's budgetary cycle, an extraordinary tension exists between the need to preserve an operational balance of the remaining funds for the biennium and the need to proceed with translation so that the Court can continue with its judicial work. The maintenance of the Court's work is thus put in serious jeopardy.

16. The greater workload of the Court has also meant that for judges and Registry professionals, secretarial support, already modest, has become quite inadequate.

17. In its 1996–1997 budget submission, the Court proposed the conversion of seven temporary posts to permanent posts, to obtain more secretaries (though still not a secretary for each judge), a finance assistant for the installation, maintenance and management of computer systems, and translators and clerk-typists. At the end of the budgetary process, the decision taken was only to allocate three temporary posts. As a consequence, the Registry in 1996–1997 was required to function with only four posts in Language Services and four posts in the typing pool.

18. The increased workload of the Court has meant that the Court is also understaffed so far as its legal staff is concerned. As of 1998, it has a staff of six officers to cover all its legal and diplomatic needs. None serve as clerks to the judges.

19. Faced with these realities, in its 1998–1998 budget submission, the Court again proposed the reinstatement of the four lost temporary posts (two translators and two typists). These requests fell far short of what the Court actually needs to fulfil its functions under the Charter and the Statute. The translation posts were not approved, though additional funds were added to the budget for temporary assistance for meetings.

20. The Registry is using all means to deal with these problems, including attempting to recruit translators under one-year fixed-term contracts and utilizing external translators outside the premises. The outsourcing of translation nonetheless entails administrative burdens, for which staff support is lacking.

21. The Court has appreciated the unfreezing, in the last budget allocation, of three previously frozen posts. This has allowed the Court to fill the post of Head of Language Services and to appoint an Indexer and an Associate Information Officer. The burden upon the Information Services has been particularly acute, as there is not even a secretary or administrative assistant. This post is urgently needed to allow the two Professional officers to use their time more efficiently and appropriately. The Court has but one telephone for the use of the press. It requires a properly equipped press room.

22. It must also be mentioned that the Court's compliance with the mandated reduction of $885,600 in its 1996–1997 budget has meant that, in effect, its budget for external printing purposes was cut by over 50 per cent. Publication of the pleadings of cases has since 1983 been sporadic, and there has been no publication of pleadings received since 1990. In spite of the effort of the Court to maintain a good production rate, the backlog has grown to huge proportions. If the work of the Court is not widely accessible, its contribution to the prevention of conflicts and the peaceful settlement of disputes can not be attained.

23. The Court has set up a new Computerization Department, composed of two persons, drawing upon personnel of the Finance Department. This has left this latter department very hard pressed.

3. The response of the Court to the double challenge of an increased workload and an insufficiency of resources

24. The Court has responded with determination to operate an increased workload with maximum efficiency. This drive for efficiency comprises several elements.

(a) Rationalization of the Registry

25. In order to come to terms with a situation in which the workload of the Court has increased and the means at its disposal has decreased, the Court created a subcommittee to examine the work methods in the Registry and to make proposals for their rationalization and improvement. The Subcommittee on Rationalization intensively reviewed all component parts of the Registry and, in November 1997, presented a report containing observations and recommendations on the administration of the Registry as a whole, as well as observations and recommendations regarding the individual divisions of the Registry. The recommendations concerned work methods, management questions and the organizational set-up of the Registry. The Subcommittee in particular recommended that some

measures of decentralization and reorganization be implemented in the Registry. The Court in December 1997 accepted virtually all recommendations of the Subcommittee on Rationalization and these decisions of the Court are being implemented. They have been passed to the Advisory Committee on Administrative and Budgetary Questions.

(b) Information technology

26. In order to maximize its efficiency and in compliance with the recommendations of the General Assembly, the Court has taken full advantage, within its budgetary means, of electronic techniques.

27. Since 1993, there has been established at the Court an internal computer network which enables the Members of the Court and its staff to use advanced software programmes, send internal e-mail and share documents and databases. This has resulted in increased efficiency and in cost savings. In particular, lawyers and translators can, through means of the indexing software, research a vast array of documentation to find legal terminology, precedents, citations and quotations. In turn, the use of the indexing software considerably facilitates efficient translations of documents. The Court has also sought to decrease the typing workload by encouraging parties to submit their documents in digital format. Such digital documents are also included in the Court's indexing database. If funds were to be provided to computerize the Court's case law and archives, the system would be far more effective still.

28. More recently, the Court has established a very successful Web site on the Internet as well as mirror sites in various universities. This immediately well-used and popular facility not only has raised the Court's profile but also has transformed the way the Court communicates its Orders, opinions and judgments. It is no longer necessary so often to distribute pre-publication documents of this category by mail to Foreign Offices, legal advisers, international organizations, embassies and academics; these users turn routinely to the Court's Web site to follow its work and to download whatever documentation they require.

29. The Court's Web site contains, as well as fundamental constitutional documents, judgments and other legal documents issued, as from the time of the establishment of the site along with the written and oral pleadings of the parties. However, because of the Court's very limited resources, it has not been possible, as noted above, to scan past Orders, judgments and opinions from the years 1946–1997, though such data are important both to States deciding whether to submit a dispute to the Court and to those currently engaged in litigation.

30. Furthermore, the continuous development and expansion of the Web site in its coverage of all contemporary material is essentially being carried out by one Registry staff member, already burdened with many other functions. Assistance is urgently needed. What can be achieved with such a technical post would still represent a considerable net saving for the Court, both directly and in terms of increased efficiency of operations.

31. The development of an e-mail facility in the Registry has also meant that translators can submit translations for review from any locality in the world (while confidentiality remains assured), thus saving costs on travel to the Court that was previously necessary. The travel element in the budget for temporary assistance in translating, interpreting and typing has now become more modest.

32. An internal Web site – an Intranet – is also under development. This will contain not only all the documents available on the Internet site but also other centralized documents and databases intended solely for internal use within the Court.

33. This will enhance operational efficiency still further.

(c) Streamlined work procedures

34. The Court also charged its Rules Committee with developing proposals to maximize efficiency. It was asked in particular to address the growing gap between the ending of the written phase of proceedings and the start of the oral phase, a gap caused by the backlog the Court has to work through. As a result, the Court has adopted an important series of measures, reported in summary by President Schwebel in his address to the General Assembly on 27 October 1997. The Court has also identified ways in which States appearing before it could assist in the expeditious disposal of the Court's work. To that end, a note will be given to the agents representing the parties to new cases at their first meeting with the Registrar. The measures concerning the Court itself, and those concerning the parties, together with the note on the latter, are the subject of press communiqué 98/14 of 6 April 1998.

35. *Measures applying particularly to the Court.* (a) It has been the long-standing practice for each judge, upon the conclusion of the oral proceedings of a case, to prepare a written note analysing the key issues in the case. These notes are translated and circulated for study before the judges meet to deliberate on a case. The Court has now determined that it may proceed without written notes where it considers it necessary, in suitable cases concerning preliminary phases of the proceedings on the merits (e.g. objections to the jurisdiction of the Court or the admissibility of an

application). This is already the practice, because of the urgency in the case of requests for interim measures of protection. This departure will be on an experimental basis. The traditional practice regarding the preparation of written notes will be maintained in phases of cases in which the Court is to decide on the merits.

(b) When the Court has to adjudicate on two cases concerning its jurisdiction, it will be able to hear them "back-to-back" (that is to say, in immediate succession), so that work may then proceed on them concurrently. This innovation will be undertaken on an experimental basis, where there are appropriate cases and a pressing need to proceed rapidly.

(c) The Court confirmed its recent practice of trying to give the parties notice of its intended schedule for the next three cases, believing that such "forward planning" assists both States and their counsel, and the Court. This planning may allow a case to be brought on with less difficulty, if the preceding one has been withdrawn.

36. *Measures applying particularly to the parties.* These measures aim to reduce the length of both the written and oral proceedings, as well as the time that elapses between the end of the written proceedings and the opening of hearings. To that end, a note will be given to the agents representing the parties to new cases at their first meeting with the Registrar.

(a) In cases submitted by two States before the Court by mutual consent (Special Agreement), the Court will permit written pleadings to be filed consecutively by the parties, and not simultaneously as provided in principle by the Rules of the Court. Such a procedure could, in that type of case, moderate the number of exchanges of written pleadings.

(b) With regard to the written proceedings in general, the Court has asked the parties to see to it that the content of Memorials is clear and that the annexes are more strictly selected. The parties are also asked to supply all or part of any available translations of the written pleadings.

(c) The Court drew the attention of the parties to the succinctness required of the hearings, especially when dealing with preliminary phases of the proceedings on the merits. A text of the note to be given to the parties appears in the annex to the present report.

The above revised working methods are already in operation.

37. The Court is working at full stretch, with longer working hours for the judges and the Registry and assiduous attention to maximizing efficient use of the resources which have been made available to us. The manner in which the Court was able to deal with the urgent application from Paraguay in April 1998 is testimony to this. The application was received on 3 April; by 9 April the Court had met, heard legal argument, deliberated and handed down its Order (which was immediately available in print and upon the Court's Web site).

4. What the Court needs

38. Since the beginning of the 1980s the International Court of Justice has been struggling to deal with a very heavy docket of cases with a relatively modest increase in resources. The initial increase in resources in those years has been prejudiced by the later cuts which have been imposed on the Court. And the modest budget allotted to the Court is a minute and diminishing proportion of the budget of the United Nations.

39. The Court has throughout this period been sensitive to the budgetary problems being faced by the United Nations and its budgetary requests have accordingly been moderate, reflecting great self-restraint even in the face of real difficulties. The Court has tried, in significant measure, to address the problems associated with the increased workload by imposing upon itself longer working hours and more rigorous working conditions. It has also tried to cope with the increased workload by taking every opportunity to improve its efficiency. The introduction of Intranet and Internet facilities, the use of electronic methods, the increasing professionalism of its publicity, the revision of its work methods, the suggestions made in turn to States parties appearing before it, all testify to this determination. In the execution of its insistence upon efficiency, the Court has been dynamic and forward-looking.

40. However, two elements remain clear. The first is that these efforts and improvements, notwithstanding their inherent value, can not alone achieve a tolerable professional environment in which to render judicial justice. The time has come for the General Assembly to provide the necessary increase in resources to match the internal efforts already made by the Court itself, so that a major organ of the United Nations can carry out the single task allocated to it under the Charter: the settlement of disputes between States and the provision of advisory opinions in accordance with international law. The truth is that in failing to provide the necessary resources, notwithstanding all the efforts made by the Court itself, the General Assembly is diminishing the importance it attaches to the peaceful resolution of international disputes through law.

41. Secondly, the Court notes that, although the General Assembly is operating under great financial constraints, it

has nonetheless found the means to support other judicial bodies. In this context, the Court observes that it has an annual budget of approximately $11 million while the 1997 budget of the International Tribunal for the Former Yugoslavia stands at $70 million. The Court is aware that that Tribunal has certain needs which it itself does not have (for example, for investigators in the field, or witness protection programmes). But the Court does need that which is essential for every judicial body to function. And even as regards this common element, the Court and the Tribunal do not receive comparable treatment.

42. Thus the General Assembly has recently adopted budgetary provisions for the International Tribunal for the Former Yugoslavia granting it further permanent posts. Among these were 22 legal personnel, to provide clerks for each judge (with the rest serving in the Registry). The judges of the International Court have no such legal clerks at all.

43. There is a minimum that the Court requires in order to make its full contribution to conflict prevention and dispute settlement, one of the major tasks of our times. There are certain unavoidable needs. Because the translation services are so understaffed, three extra posts are severely needed. In the tiny Press and Information Department, a clerical and administrative officer is a necessity together with proper press facilities. For computerization, the Court seeks appropriate scanning equipment, together with the transformation of a fixed-term post to a permanent post as well as one new additional post. The Court is studying both how to clear the backlog in publications and how in the future its publication programme can be carried out in the most efficient way. Its budget application will reflect its conclusions, with regard both to personnel and to available contemporary technology. And, for all the reasons described above, the Court regards it as essential to expand the staff of the Archives Department, to engage two messenger/drivers and, at the very minimum to upgrade a post within the Department of Legal Affairs. In addition, the Court will seek a pool of clerks to assist the Members of the Court, a pool of interns for the Registry, a secretary for each judge and a Professional assistant for the President. These will be among the budgetary proposals to be advanced for the next biennium, elements of which may even be made in an earlier request should the situation so require.

44. In the meantime, the Court will continue its judicial work with dedication and vigour.

Annex

Note

1. The International Criminal Court recently carried out a re-examination of its working methods and took various decisions in this respect, bearing in mind both the congested state of the List and the budgetary constraints it has to face.

2. Some of these decisions concern the working methods of the Court itself. In outline, these measures, directed towards accelerating the Court's work, were brought to the attention of the General Assembly by the President of the Court at the fifty-second session of the Assembly, on 27 October 1997 (A/52/PV.36, pp. 1-5). The Court took a further series of decisions, also directed towards accelerating its work, in regard to various administrative matters.

3. The Court would further be grateful to parties for their assistance, and wishes in this connection to offer them the following guidance:

(a) It should be noted that, in cases brought by Special Agreement, written pleadings are ordinarily filed simultaneously and not consecutively, in accordance with Article 46 of the Rules of Court. In such proceedings, the parties have occasionally tended to wait until they have known the other party's arguments before fully revealing their own. This has possibly resulted in a proliferation of pleadings and delay in the compilation of case files. The Court would therefore point out that the simultaneous filing by parties of their written pleadings is not an absolute rule in such circumstances. The Court, for its part, would see nothing but advantages if, in these cases, the parties agreed, in accordance with Article 46, paragraph 2, of the Rules of Court, to file their pleadings alternately.

(b) Each of the parties should, in drawing up its written pleadings, bear in mind the fact that these pleadings are intended not only to reply to the submissions and arguments of the other party, but also, and above all, to present clearly the submissions and arguments of the party which is filing the pleadings. In the light of this, any summary of the reasoning of the parties at the conclusion of the written proceedings would be welcome.

(c) The Court has noticed an excessive tendency towards the proliferation and protraction of annexes to written pleadings. It strongly urges parties to append to their pleadings only strictly selected documents. In order to ease their task at this stage of the proceedings, the Court will, acting by virtue of Article 56 of the Rules of Court, more readily accept the production of additional documents during the period beginning with the close of the written proceedings and ending one month before the opening of the oral proceedings.

(d) Where one or other of the parties has a full or a partial translation of its own pleadings or of those of the other party in the second working language of the Court, the Registry would be glad to receive those translations. The same applies to the annexes. Once the Registry has examined the documents so received, it will communicate them to the other party and inform it of the manner in which they were prepared.

(e) The Court draws the attention of parties to the fact that, according to Article 60, paragraph 1, of the Rules of Court:

> "1. The oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the adequate presentation of that party's contentions at the hearing. Accordingly, they shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings, or merely repeat the facts and arguments these contain."

These provisions must of course be complied with, especially when objections of lack of jurisdiction or of inadmissibility are being considered. In those latter events, pleadings must, *inter alia*, be limited to a statement of the objections and exhibit the requisite degree of brevity.